

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

Claimant

NEWMAN MEMORIAL COUNTY HOSPITAL

AND

Insurance Carrier

ORDER

ISSUES

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On Friday, October 18, 1996, claimant was in the shower getting ready for work when her left leg started to ache. Claimant went to work and from there she called her family physician, Dr. H. R. Bradley. His office notes for that date reflect that claimant reported pain in her left knee starting that morning. She did not mention any accident or that the injury was work-related. He sent her home to rest with heat on her leg and to take Ibuprofen. On Sunday, October 20, 1996, claimant went to the emergency room at Newman Memorial County Hospital. The emergency room records from that visit describe her chief complaint as follows: "She was at home on October 18 getting dressed, when she began to have sudden onset of pain in the left quadriceps muscle."

The record shows that claimant had been treated for complaints of knee and hip pain earlier that year. That previous summer, she also had complaints of pain down the front of her thigh and was diagnosed with a degenerative condition in both knees.

Ten days after that October 18, 1996, onset of symptoms at home in the shower, claimant reported a work-related injury to the respondent. Claimant now alleges that her left leg, left knee, left side, and low-back complaints are related to an incident that occurred at work on October 12, 1996. On that date, claimant was on break in the cafeteria. Her stepdaughter and her stepdaughter's husband came into the cafeteria looking for claimant's husband. During their conversation, claimant's daughter had an epileptic seizure and began to collapse. Claimant attempted to break her stepdaughter's fall. Claimant did not experience any pain at the time of this incident. She finished her work shift that day and worked every day she was scheduled thereafter until the incident in the shower on October 18, 1996. During this six day interval, claimant neither experienced any pain nor did she seek medical treatment.

The record is devoid of any expert medical opinion relating claimant's injuries to work. In fact, the only reference by a physician to the injury being work connected is in the December 17, 1996, office notes of Dr. James N. Glenn where he simply reiterates the history given to him by claimant. The claimant gave a similar history to her chiropractor on October 30, 1996.

The November 7, 1996, Emergency Department Report of Wayne Tilson, M.D., states in part:

REVIEW OF SYSTEMS: She has had some chronic right knee pain and has taken Ibuprofen for quite some time for this.

In addition, she reports that 6 days prior to the onset of pain that she was working in the cafeteria and a person had a seizure and she went over to see if she could help. She did not actually do any lifting. She was not injured at that time and had no injury reported from that. She had no pain or difficulty and it was not until 6 days later in the shower that she began to develop some pain as reported above. In the interim few days, she was bending, lifting, moving, twisting and doing all her activities normally without any pain or discomfort. . . .

At this time, it is difficult to see how this syndrome is work related, as the only possible work related history was 6 days before and was not associated with lifting or particular injury, at least at this time it does not appear to be connected to the present symptoms.

The Workers Compensation Act places upon the claimant the burden of proving the various conditions upon which the right to benefits depends. K.S.A. 1996 Supp. 44-501. The term "burden of proof" is defined in K.S.A. 44-508(g) as "the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true" See Chandler v. Central Oil

Corp., 253 Kan. 50, 853 P.2d 649 (1993). Further, claimant must establish by evidence the connection between an accidental injury and the employment. This connection cannot rest on surmise or conjecture. Siebert v. Hoch, 199 Kan. 299, 428 P.2d 825 (1967). In this case, such a causal connection has not been established.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order for compensation by Administrative Law Judge Floyd V. Palmer, dated April 2, 1998, should be, and is hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of June 1998.

BOARD MEMBER

c: Michael G. Patton, Emporia, KS
Steven J. Quinn, Kansas City, MO
Office of the Administrative Law Judge, Topeka, KS
Philip S. Harness, Director